

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRACY L. BULLENE,	)	CASE NO. C12-808-MJP-MAT
	)	
Plaintiff,	)	
	)	
v.	)	REPORT AND RECOMMENDATION
	)	RE: SOCIAL SECURITY
MICHAEL J. ASTRUE, Commissioner	)	DISABILITY APPEAL
of Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Tracy L. Bullene proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be AFFIRMED.

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01 **FACTS AND PROCEDURAL HISTORY**

02 Plaintiff was born on XXXX, 1963.<sup>1</sup> She completed ninth grade and previously  
03 worked as a factory worker, housekeeper, and retail assistant. (AR 159-64.)

04 Plaintiff filed applications for SSI and DIB on May 22, 2008, and May 23, 2008,  
05 respectively. (See AR 140-45.) Those applications were denied initially and on  
06 reconsideration, and Plaintiff timely requested a hearing. (AR 78-86.)

07 On August 6, 2010, ALJ Mattie Harvin-Woode held a hearing, taking testimony from  
08 Plaintiff, lay witness Robin Lee Anderson, and a vocational expert. (AR 33-73.) On  
09 November 16, 2010, the ALJ issued a decision finding Plaintiff not disabled. (AR 10-22.)  
10 Plaintiff timely appealed. The Appeals Council denied Plaintiff's request for review on  
11 March 21, 2012 (AR 1-6), making the ALJ's decision the final decision of the Commissioner.  
12 Plaintiff appealed this final decision of the Commissioner to this Court.

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining  
15 whether a claimant is disabled. See 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
16 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
17 not engaged in substantial gainful activity since January 1, 2008, the alleged onset date. (AR  
18 12.) At step two, it must be determined whether a claimant suffers from a severe impairment.  
19 The ALJ found Plaintiff's osteoarthritis and chronic low back pain, left shoulder tendonitis,  
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21 <sup>1</sup> Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule  
22 of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic  
Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United  
States.

01 bilateral carpal tunnel syndrome, left hip tendonitis, depressive disorder, panic disorder  
02 without agoraphobic, personality disorder not otherwise specified, and polysubstance  
03 dependence (in remission) to be severe impairments. (AR 12.) Step three asks whether a  
04 claimant's impairments meet or equal a listed impairment. The ALJ found that Plaintiff's  
05 impairments did not meet or equal the criteria of a listed impairment. (AR 13.)

06 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
07 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
08 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
09 performing light work, with the following exertional limitations: she is limited to frequent  
10 postural movements, including balancing bending, climbing, crouching, kneeling, and  
11 stooping, and is also limited to frequent handling and fingering. (AR 15.) As to mental  
12 limitations, the ALJ found that Plaintiff is limited to work involving simple, routine tasks, and  
13 can have only "minimal contact with the general public, and only a few co-workers." (AR  
14 15.)

15 With that assessment, the ALJ found Plaintiff capable of performing her past work as  
16 a housekeeper. (AR 20.) The ALJ continued on to step five to find, in the alternative, that in  
17 light of the Medical-Vocational Guidelines and the vocational expert's testimony, Plaintiff  
18 was capable of performing other jobs, such as folder. (AR 21-22.)

19 This Court's review of the ALJ's decision is limited to whether the decision is in  
20 accordance with the law and the findings supported by substantial evidence in the record as a  
21 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
22 more than a scintilla, but less than a preponderance; it means such relevant evidence as a

01 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
02 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
03 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
04 F.3d 947, 954 (9th Cir. 2002).

05 Plaintiff argues the ALJ's RFC assessment fails to account for all of Plaintiff's  
06 physical and mental limitations, and also contends that the ALJ erred in discounting her  
07 credibility.

#### 08 **The RFC Assessment**

09 Plaintiff contends that the ALJ erred in evaluating the medical opinions regarding her  
10 physical limitations and her mental limitations.

11 In general, more weight should be given to the opinion of a treating physician than to a  
12 non-treating physician, and more weight to the opinion of an examining physician than to a  
13 non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not  
14 contradicted by another physician, a treating or examining physician's opinion may be  
15 rejected only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d  
16 1391, 1396 (9th Cir. 1991)). Where contradicted, a treating or examining physician's opinion  
17 may not be rejected without "specific and legitimate reasons" supported by substantial  
18 evidence in the record for so doing." *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499,  
19 502 (9th Cir. 1983)). The ALJ may reject physicians' opinions "by setting out a detailed and  
20 thorough summary of the facts and conflicting clinical evidence, stating his interpretation  
21 thereof, and making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing  
22 *Magallanes*, 881 F.2d at 751). Rather than merely stating her conclusions, the ALJ "must set

01 forth [her] own interpretations and explain why they, rather than the doctors', are correct." *Id.*  
02 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

03 In evaluating the weight to be given to the opinions of medical providers, Social  
04 Security regulations distinguish between "acceptable medical sources" and "other sources."  
05 Acceptable medical sources include, for example, licensed physicians and psychologists,  
06 while other non-specified medical providers are considered "other sources." 20 C.F.R. §§  
07 404.1513(a) and (e), 416.913(a) and (e), and Social Security Ruling (SSR) 06-03p.

08 Less weight may be assigned to the opinions of "other" sources. *Gomez v. Chater*, 74  
09 F.3d 967, 970 (9th Cir. 1996). However, "[s]ince there is a requirement to consider all  
10 relevant evidence in an individual's case record," the ALJ's decision "should reflect the  
11 consideration of opinions from medical sources who are not 'acceptable medical sources' and  
12 from 'non-medical sources' who have seen the claimant in their professional capacity." SSR  
13 06-03p. "[T]he adjudicator generally should explain the weight given to opinions from these  
14 'other sources,' or otherwise ensure that the discussion of the evidence in the determination or  
15 decision allows a claimant or subsequent reviewer to follow the adjudicator's reasoning, when  
16 such opinions may have an effect on the outcome of the case." *Id.* See also *Turner v. Comm'r*  
17 *of Soc. Sec.*, 613 F.3d 1217, 1223-24 (9th Cir. 2010) (lay testimony from other sources may  
18 be expressly disregarded if the ALJ gives germane reasons for doing so). An ALJ must  
19 provide germane reasons for discounting "other source" testimony. See *Dodrill v. Shalala*, 12  
20 F.3d 915 (9th Cir. 1993).

21 **Physical Limitations**

22 On September 18, 2009, family practitioner Deborah Oksenberg, M.D., examined and

01 evaluated Plaintiff using a DSHS form. (AR 423-28.) Though Dr. Oksenberg went on to  
02 treat Plaintiff, the evaluation was completed after Plaintiff's first visit. (AR 426.) Dr.  
03 Oksenberg opined that Plaintiff had "marked" limitations in her ability to sit, stand, walk, lift,  
04 handle, and carry, and restricted mobility, agility, or flexibility as to balancing, bending,  
05 climbing, crouching, handling, kneeling, pulling, pushing, reaching, sitting and stooping.  
06 (AR 425.) Dr. Oksenberg also opined that Plaintiff could perform sedentary work. (AR 425.)

07 The ALJ assigned "little weight" to Dr. Oksenberg's opinion:

08 In September 2009, the claimant met with treating physician, Deborah  
09 Oksenberg, MD for a DSHS physical evaluation, again in connection with the  
10 claimant's application for benefits ([AR 423-28]). Dr. Oksenberg found that  
11 the claimant had muscle tension and decreased range of motion in her back and  
12 shoulders ([AR 424]). Dr. Oksenberg also found that the claimant had a  
13 positive Phalen maneuver on her left wrist with decreased grasp on the left side  
14 ([AR 424]). Dr. Oksenberg recommended that the claimant have an EMG test  
15 to determine if occupational therapy or hand surgery would be needed ([AR  
16 424]). In November 2009, the claimant reported to physical therapy provider  
17 Kenny Burke, MPT, that she "was doing well and felt that she could continue  
18 with strengthening exercises at home" ([AR 450]). Mr. Burke reported that  
19 [the] claimant had not called to follow-up with physical therapy since  
20 cancelling her last appointment on December 1, 2009 ([AR 450]). Mr. Burke  
21 stated that the claimant's short-term goals of having 2/10 pain level or less had  
22 been met for activities of daily living, and that she would be formally  
discharged from physical therapy ([AR 450]). Later, a December 2009 EMG  
test was normal regarding the claimant's reported left forearm pain ([AR 508]).  
Dr. Oksenberg opined that the claimant's carpal tunnel syndrome, shoulder []  
sprain, and mid-back pain markedly interfered with the claimant's ability to  
perform several work-related activities, including lift, handle, and carry ([AR  
425]). Overall, Dr. Oksenberg opined that the claimant was limited to the  
sedentary level of physical exertion, based on the claimant's shoulder, back,  
and wrist pain ([AR 425]). Dr. Oksenberg's opinion, however, is inconsistent  
with the claimant's reported improvement, objective findings in the claimant's  
routine physical therapy notes, and treatment records, including those signed  
by Dr. Oksenberg ([AR 449-65, 508-12]). Accordingly, only little weight can  
be given to Dr. Oksenberg's opinion.

(AR 19.) Plaintiff argues that the ALJ's reasons for discounting Dr. Oksenberg's opinion are

01 not supported by substantial evidence because, contrary to the ALJ's findings, (1) the  
02 treatment records do not actually contradict Dr. Oksenberg's opinions, and (2) the entirety of  
03 the physical therapy records do not demonstrate significant improvement.

04 Both of these arguments fail. The treatment records do contain evidence that  
05 Plaintiff's limitations were not as severe as described in Dr. Oksenberg's initial evaluation,  
06 specifically Plaintiff's normal EMG results in December 2009 (AR 511), and Plaintiff's full  
07 range of motion in wrist and fingers without pain and 5/5 grip strength in December 2009  
08 (AR 509). Though it is true that Plaintiff continued to experience wrist tenderness (AR 509)  
09 and "significant left forearm pain" that "interfere[ed] with activities" (AR 552), Dr.  
10 Oksenberg's notes do not document the severe limitations identified in her evaluation.<sup>2</sup>

11 Particularly because Plaintiff showed improvement with physical therapy in  
12 November 2009 (AR 449-50), and failed to pursue therapy for months thereafter (AR 511-  
13 12), the ALJ's interpretation of Plaintiff's treatment records is reasonable. Plaintiff's report  
14 of less than 2/10 pain level during activities of daily living 70% of the time, sleep without  
15 pain, and improved strength, palpation, and posture (AR 449-50) is substantial evidence to  
16 support the ALJ's finding that her condition improved with physical therapy. Though  
17 Plaintiff emphasizes that some pain remained, the ALJ was not unreasonable in finding that  
18 Plaintiff's condition improved with physical therapy. Accordingly, the ALJ did not err in  
19 assessing Dr. Oksenberg's evaluation.

20 Plaintiff also argues that the ALJ erred by failing to discuss another DSHS physical

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21 <sup>2</sup> Dr. Oksenberg's evaluation opinions are also inconsistent with an earlier DSHS evaluation  
22 completed by Teresa Regier, ARNP, in February 2009. (AR 471-74.) Ms. Regier opined that Plaintiff  
could perform light work, with only mild limitation as to lifting, handling, and carrying. (AR 473.)

01 evaluation, completed by Henry Houghton, M.D., in February 2008. (AR 236-41.) Dr.  
02 Houghton opined that Plaintiff could perform light work, and that tendonitis and carpal tunnel  
03 syndrome caused moderate limitations in her ability to lift, handle, and carry. (AR 238.) Dr.  
04 Houghton also identified restrictions on Plaintiff's balancing, crouching, handling, kneeling,  
05 pulling, and pushing. (AR 238.) The Commissioner contends that the ALJ's failure to  
06 address this evaluation is harmless error, because Dr. Houghton's evaluation "is consistent  
07 with [the ALJ's] [RFC] assessment." (Dkt. 15 at 14.)

08       The Court agrees. The ALJ accounted for Dr. Houghton's limitations on balancing,  
09 crouching, kneeling, and handling by limiting Plaintiff to performing those activities  
10 "frequently." (AR 15.) Dr. Houghton's lifting, carrying, pushing, and pulling limitations  
11 were accommodated in the ALJ's finding that Plaintiff could perform "light work as defined  
12 in 20 CFR 404.1567(b) and 416.967(b)": those regulations define light work as "involve[ing]  
13 lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing  
14 up to 10 pounds." Furthermore, Dr. Houghton found Plaintiff capable of performing light  
15 work despite her limitations, and the ALJ limited Plaintiff to light work and found her capable  
16 of performing her past job as a housekeeper, which is classified as light work. *Compare* AR  
17 238 *with* AR 15 & 20. Accordingly, Dr. Houghton's evaluation is consistent with the ALJ's  
18 RFC assessment, and the ALJ's failure to specifically mention Dr. Houghton's evaluation is at  
19 most harmless error.

#### 20       **Mental Limitations**

21       Plaintiff assigns error to the ALJ's assessment of multiple medical opinions related to  
22 her mental impairments, specifically the opinions of W. Douglas Uhl, Psy.D.; Anselm



01 Parlatore, M.D.; Sylvia Thorpe, Ph.D.; and Ellen Walker Lind, Ph.D.

02 Dr. Uhl

03 Dr. Uhl performed a one-time DSHS evaluation of Plaintiff on February 24, 2008, and  
04 opined that Plaintiff could return to work, with some mild and moderate cognitive and social  
05 limitations. (AR 227-35.) The ALJ assigned “substantial weight” to Dr. Uhl’s opinion (AR  
06 16-17), but Plaintiff contends that the ALJ did not account for two of the limitations identified  
07 by Dr. Uhl: moderate limitations in Plaintiff’s ability to relate to supervisors and to tolerate  
08 stress.

09 But, as noted by the Commissioner, the state agency medical consultant Anita  
10 Peterson, Ph.D., considered those limitations in the Mental Residual Functional Capacity  
11 Assessment (MRFCA) — finding Plaintiff to have moderate limitation as to the ability to  
12 accept instructions and respond appropriately to criticism from supervisors (AR 311) and  
13 moderate limitations as to completing a normal workday and workweek and responding  
14 appropriately to changes in work setting (AR 311). Dr. Peterson nonetheless found that  
15 Plaintiff was capable of “perform[ing] work that does not directly involve the general public  
16 and a few coworkers. She is capable of working independently after a period of  
17 accom[m]odation.” (AR 312.) The ALJ was entitled to rely on Dr. Peterson’s MRFCA  
18 (which was affirmed by Thomas Clifford, Ph.D. (AR 350)), which translated Plaintiff’s  
19 impairments into workplace restrictions, when crafting the RFC assessment. *See Stubbs-*  
20 *Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

21 Dr. Parlatore

22 Dr. Parlatore, a psychiatrist, evaluated Plaintiff multiple times in connection with her

01 application for DSHS benefits. (AR 417-22, 429-38, 536-41.) The ALJ assigned “little  
02 weight” to Dr. Parlatore’s opinions:

03 In September 2009, October 2009, and July 2010, the claimant met with  
04 psychiatrist, Anselm Parlatore, MD, for psychiatric evaluations, in connection  
05 with the claimant’s continued receipt of benefits through DSHS ([AR 417-22,  
06 429-38, 536-41]). Although Dr. Parlatore met one-on-one with the claimant,  
07 his opinions in these evaluations are internally inconsistent. In September  
08 2009, Dr. Parlatore found that, with the exception of complex instructions, the  
09 claimant had no limitations with regard to her cognitive abilities ([AR 420]).  
10 On the next page, Dr. Parlatore then stated that the claimant had “Global  
11 deficits” including cognitive problems ([AR 421]). On the following page, Dr.  
12 Parlatore then provided the following observations: “Attractive, articulate,  
13 cogent, coherent, lucid woman” who had been crying and had a “sweet  
14 demeanor” ([AR 422]). Despite the claimant’s sweet demeanor, Dr. Parlatore  
15 opined that the claimant had marked to severe limitations in several areas of  
16 social functioning, including her ability to relate appropriately to co-workers,  
17 supervisors, public contacts, and the ability to tolerate the pressures and  
expectations of a normal work setting ([AR 420, 539]). Although Dr. Parlatore  
opined that the claimant had essentially no cognitive limitations on a  
September 2009 DSHS form, he later opined that the claimant was “markedly”  
limited in concentration, persistence, and pace; social functioning, and even in  
her activities of daily living, despite the fact that the claimant goes bike riding,  
camping, and fishing ([AR 430]). Dr. Parlatore even stated that the claimant  
had experienced “Repeated episodes of decompensation, each of extended  
duration” for both the “paragraph B” criteria and “paragraph C” criteria ([AR  
430]). Dr. Parlatore stated that the basis for this opinion was his psychiatric  
evaluation done in September 2009, however, there is no statement,  
observation or allegation that the claimant had ever experienced one episode of  
decompensation, much less “repeated” ones. Due to the numerous internal  
inconsistencies within Dr. Parlatore’s evaluations, only little weight can be  
given to his opinions.

18 (AR 19-20.) Plaintiff contends that the ALJ erred in finding that Dr. Parlatore’s evaluations  
19 were internally inconsistent, and that the ALJ failed to provide a specific and legitimate  
20 reason to reject Dr. Parlatore’s opinions that Plaintiff’s social functioning was limited to a  
21 marked or severe degree in several areas. *See* Dkt. 14 at 16-17.

22 The Court disagrees, because the ALJ identified multiple inconsistencies that

01 undermine the accuracy of Dr. Parlatore's opinions. Internal inconsistencies in a physician's  
02 report amount to a specific and legitimate reason to reject a physician's opinion. *Bayliss v.*  
03 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). As noted by the Commissioner, the ALJ has  
04 discretion to determine whether inconsistencies undermine a physician's opinion. *See*  
05 *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999).

06 It was reasonable for the ALJ to interpret Dr. Parlatore's evaluations as internally  
07 inconsistent. In his October 2009 report — which was based on the examination he did  
08 before the September 2009 evaluation — he cited evidence for which there is no support in  
09 the September 2009 evaluation. *Compare* AR 430 (finding repeated episodes of  
10 decompensation, each of extended duration in October 2009) *with* AR 417-22 (September  
11 2009 evaluation containing no mention of episodes of decompensation).

12 Dr. Parlatore also found in October 2009 that Plaintiff was markedly limited in daily  
13 activities and concentration, persistence, and pace. (AR 430.) But in September 2009, he  
14 found her only moderately limited as to working with complex instructions, and found no  
15 cognitive impairments otherwise. (AR 420.) Dr. Parlatore reiterated the September 2009  
16 findings regarding cognitive impairments again in July 2010 after a second examination. (AR  
17 539.)

18 In October 2009, Dr. Parlatore indicated that Plaintiff experiences "hallucinations,  
19 delusions or paranoid thinking" (AR 429), but in September 2009 he stated that she has "[n]o  
20 psychosis, hallucinations or delusions" (AR 422). In July 2010, Dr. Parlatore found that  
21 Plaintiff has "[n]o psychosis, hallucinations or delusions." (AR 541.)

22 Also, in both his September 2009 and July 2010 evaluations, Dr. Parlatore did not

01 support his opinions regarding functionality with specific findings. The evaluation forms asks  
02 the physician to “[d]escribe what the individual is capable of doing despite his/her  
03 impairments,” but Dr. Parlatore only reiterated a list of her impairments. *See* AR 421, 539.

04 In light of these inconsistencies between Dr. Parlatore’s multiple evaluations and, in  
05 some instances, within the same evaluation, the ALJ did not err in discounting Dr. Parlatore’s  
06 opinions on that basis.

07 Dr. Thorpe

08 Dr. Thorpe performed a one-time psychological evaluation in March 2008 (AR 242-  
09 44), and summarized her opinions as follows: “Ms. Bullene’s memory functions are well  
10 below average to borderline. She has very poor short-term memory and very poor working  
11 memory. Multitasking is mildly impaired. In addition it appears that she is clinically  
12 depressed and may have traumatic symptoms.” (AR 244.) Dr. Thorpe also noted that  
13 Plaintiff “tends to give up before limits of abilities are reached,” but also found that Plaintiff  
14 “does try, doesn’t complain, and has real limitations.” (AR 243.) Dr. Thorpe’s evaluation  
15 does not include an opinion regarding Plaintiff’s ability to work, or specific limitations related  
16 to work functions.

17 The ALJ assigned “little weight” to Dr. Thorpe’s opinions:

18 Dr. Thorpe’s findings and opinion [] are inconsistent with the overall record,  
19 and with the claimant’s reported activities, showing only mild cognitive  
20 impairment, possible malingering, and activities that require concentration and  
memory, such as reading and crocheting ([AR 165-72, 195-203, 229, 248-49]).  
Accordingly, only little weight can be given to Dr. Thorpe’s opinion.

21 (AR 17.) Plaintiff contends that the ALJ’s reasons for discounting Dr. Thorpe’s evaluation  
22

are not specific and legitimate.

The Court disagrees. At least one<sup>3</sup> of the reasons provided —possible malingering — is specific and legitimate. It was reasonable for the ALJ to construe Dr. Thorpe’s note that Plaintiff “tends to give up before limits of abilities are reached” as a sign of malingering. Though Dr. Thorpe nonetheless concluded that Plaintiff does have “real limitations,” Plaintiff’s lack of full effort renders Dr. Thorpe’s testing less accurate. Accordingly, the ALJ appropriately discounted Dr. Thorpe’s opinion on that basis. *See Thomas*, 278 F.3d at 958 (holding that the ALJ was entitled to discount a medical opinion where the provider noted that the claimant did not put forth full effort on testing, because the opinion is based on invalid test results).

Dr. Lind

In July 2008, Dr. Lind performed a one-time psychological evaluation (AR 246-52) and reached the following prognosis:

Prognosis for improvement of Ms. Bullene’s symptoms is guarded based on severity and chronicity. She has not worked for years at this point and does not seem to have any desire to get her life on track. She has some reported physical concerns but no clear reason for the ongoing pattern of inability in her life. She was not emotionally prepared to put her best effort into the current evaluation, and the results of testing are not valid. There is some potential for current or recent substance abuse, but Ms. Bullene denies this. She has very

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<sup>3</sup> The ALJ’s other reasons are, arguably, neither specific nor legitimate. The ALJ’s finding that Dr. Thorpe’s opinions are inconsistent with the “overall record” is not specific and not necessarily legitimate; for example, Dr. Uhl also found that Plaintiff had some mild and moderate cognitive limitations. (AR 220.) Furthermore, though the ALJ cited evidence that Plaintiff reported reading and crocheting — activities that undermine Dr. Thorpe’s opinions regarding Plaintiff’s memory and concentration impairments — the evidence cited by the ALJ in fact reveals that Plaintiff reports that she can no longer read or crochet as much as she used to due to memory loss and carpal tunnel syndrome. (AR 169, 199.) The ALJ also cites one page of Dr. Uhl’s evaluation as corroboration, but that page includes notes that Plaintiff had poor immediate recall, very poor short-term memory, and a note that “something” is “wrong cognitively.” (AR 229.)

01 little connection with others at this point and a long history of dysfunctional  
02 relationships. She is not a good candidate for a return to work in the  
03 immediate future, but perhaps with ongoing therapy and medication, she will  
be capable of getting her life back on track.

04 (AR 248-49.) Dr. Lind also assigned a Global Assessment of Functioning (GAF) score of 45,  
05 indicating serious symptoms. *See* Diagnostic and Statistical Manual of Mental Disorders 34  
06 (4th ed. 2000) (DSM-IV-TR) (GAF of 41 to 50 describes “serious symptoms” or “any serious  
07 impairment in social, occupational, or school functioning”).

08 The ALJ credited some but not all of Dr. Lind’s opinions:

09 Despite the significant possibility that the claimant was malingering, Dr. Lind  
10 opined that the claimant had a GAF score of only 45, and stated that she was  
11 not a good candidate for return to work in the immediate future ([AR 250]).  
12 Dr. Lind’s opinion regarding the claimant’s GAF score and ability to work is  
13 inconsistent with the claimant’s behavior, possible malingering, and  
observations. Accordingly, substantial weight is given to Dr. Lind’s  
observations and objective findings, however, only little weight can be given to  
Dr. Lind’s opinion regarding the claimant[’]s GAF score and inability to work.

14 (AR 17-18.) Plaintiff contends that the ALJ erred by construing Dr. Lind’s opinion as  
15 evidence of malingering, and by discounting Dr. Lind’s opinions regarding her GAF score  
16 and inability to work.

17 The ALJ’s interpretation of Dr. Lind’s evaluation opinions is reasonable. Dr. Lind  
18 herself indicated that her testing results were invalid due to Plaintiff’s lack of effort (AR 249-  
19 50), and thus it was reasonable for the ALJ to discount Dr. Lind’s opinions based on invalid  
20 testing. Inaccurate test results can be a specific and legitimate reason to discount Dr. Lind’s  
21 opinions regarding the severity of Plaintiff’s symptoms and her ability to work. *See Thomas*,  
22 278 F.3d at 958 (finding that where a medical report is based on testing that is invalid due to

01 inaccurate self-report, the invalidity of that testing is a specific and legitimate reason to  
02 discount the medical opinion).

03 **Plaintiff's Credibility**

04 In assessing credibility, an ALJ must first determine whether a claimant presents  
05 "objective medical evidence of an underlying impairment 'which could reasonably be  
06 expected to produce the pain or other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d  
07 1028, 1036 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)).  
08 Given presentation of such evidence, and absent evidence of malingering, an ALJ must  
09 provide clear and convincing reasons to reject a claimant's testimony. *Id.* See also *Vertigan*  
10 *v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001).

11 In finding a social security claimant's testimony unreliable, an ALJ must render a  
12 credibility determination with sufficiently specific findings, supported by substantial  
13 evidence. "General findings are insufficient; rather, the ALJ must identify what testimony is  
14 not credible and what evidence undermines the claimant's complaints." *Lester v. Chater*, 81  
15 F.3d 821, 834 (9th Cir. 1996). "We require the ALJ to build an accurate and logical bridge  
16 from the evidence to her conclusions so that we may afford the claimant meaningful review of  
17 the SSA's ultimate findings." *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003). "In  
18 weighing a claimant's credibility, the ALJ may consider his reputation for truthfulness,  
19 inconsistencies either in his testimony or between his testimony and his conduct, his daily  
20 activities, his work record, and testimony from physicians and third parties concerning the  
21 nature, severity, and effect of the symptoms of which he complains." *Light v. Social Sec.*  
22 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

01 Here, the ALJ provided three reasons to discount Plaintiff's credibility: (1) Plaintiff's  
02 poor effort on testing conducted by Dr. Lind and Dr. Thorpe; (2) daily activities inconsistent  
03 with total disability; and (3) objective medical evidence inconsistent with Plaintiff's  
04 subjective testimony. Plaintiff challenges the first two reasons.

05 First, Plaintiff's poor effort during evaluations (described in more detail above) —  
06 even if it does not constitute malingering — is a clear and convincing reason to discredit  
07 Plaintiff. *See Thomas*, 278 F.3d at 959. Though Plaintiff argues that her lack of effort  
08 resulted from her mental impairments and not from intentional malingering, it was reasonable  
09 for the ALJ to construe Plaintiff's self-limiting behaviors as undermining her credibility. *Id.*

10 Second, Plaintiff's self-reported daily activities are inconsistent with her allegations of  
11 disabling impairments. For example, Plaintiff reported the ability to take care of laundry and  
12 preparing simple meals, garden in her boyfriend's greenhouse, use public transportation, ride  
13 a bicycle, and take trips with her boyfriend to camp and fish. (AR 47-49, 52, 167.) These  
14 activities contradict Plaintiff's testimony that her physical and mental limitations prevent her  
15 from performing job duties or being around people. *See, e.g.*, AR 44. Though the ALJ did  
16 not expressly find that Plaintiff's daily activities indicate abilities that transfer to a work  
17 setting, multiple medical providers opined that Plaintiff could return to work. *See, e.g.*, AR  
18 229, 238, 473. Accordingly, Plaintiff's daily activities are a clear and convincing reason to  
19 discount her credibility. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

20 Lastly, the ALJ identified one medical opinion that undermines Plaintiff's subjective  
21 testimony (in addition to the medical opinions regarding Plaintiff's poor effort during testing).  
22 (AR 16.) The ALJ noted that Plaintiff stopped her treatment at Whatcom Counseling and



01 Psychiatric Clinic in October 2008 because she had met her treatment goals. (AR 469-70.) A  
02 social worker there assessed Plaintiff with a GAF score of 60 at the time of her discharge,  
03 which indicates only moderate symptoms or moderate difficulty in social, occupational, or  
04 school functioning. *See* DSM-IV-TR 34.

05 Accordingly, the ALJ did not err in discounting Plaintiff's credibility because she  
06 provided multiple clear and convincing reasons to disbelieve Plaintiff's subjective testimony.

07 **CONCLUSION**

08 For the reasons set forth above, this matter should be AFFIRMED.

09 DATED this 18th day of October, 2012.

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12 Mary Alice Theiler  
13 United States Magistrate Judge  
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